

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH *

WAUKESHA COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No. 2009-CX-

Complex Forfeiture: 30109

CITY OF WAUKESHA
201 Delafield Street
Waukesha, WI 53188,

Defendant.

STIPULATION AND ORDER FOR JUDGMENT

The State of Wisconsin commenced this action against the City of Waukesha to enforce state laws regulating the supply of drinking water, and which specifically set limits on radionuclides levels in drinking water. The parties now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS STIPULATED AND AGREED by the parties that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. Defendant shall pay a judgment comprised of forfeitures of \$35,000 for the violations described in the complaint, plus \$9,100 for the 26% penalty

surcharge under Wis. Stat. § 814.75(18), \$3,500 for the 10% environmental surcharge under Wis. Stat. § 814.75(12), the \$25 court costs under Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge as required by Wis. Stat. § 814.75(2), the 1% jail surcharge of \$350 under Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge required by Wis. Stat. § 814.75(15), plus \$4,900.00 for the costs of the Department of Natural Resources' investigation and \$2,037.00 as attorney fees for the Department of Justice under Wis. Stat. § 281.98(2) and (3), for a total of \$55,000.

2. The defendant shall pay the judgment as follows:

(a) Payment in the amount of \$4,900 shall be made by check payable to the Department of Natural Resources and delivered to counsel for plaintiff at the address listed below by June 15, 2009.

(b) Payment in the amount of \$2,037 shall be made by check payable to the Department of Justice and delivered to counsel for plaintiff at the address listed below by June 15, 2009.

(c) Payment in the amount of \$3,063 shall be made by check payable to the Waukesha County Clerk of Circuit Court and delivered to the clerk of court by June 15, 2009. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

(d) Payment in the amount of \$17,500 shall be made by check payable to the Waukesha County Clerk of Circuit Court and delivered to the clerk of court by December 15, 2009. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

(e) Payment in the amount of \$27,500 shall be made by check payable to the Waukesha County Clerk of Circuit Court and delivered to the clerk of court by June 15, 2010. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

3. Defendant has worked toward meeting the state drinking water radium-226, radium-228; gross alpha ("Radionuclide Standards"). Defendant's efforts include, but are not limited to, expending over \$13,500,000 in radionuclide treatment facilities, piping and new wells. Additional measures are necessary to meet Wis. Admin. Code ch. NR 809 requirements for radionuclides.

4. As of the date of this stipulation, Defendant has constructed and placed on line new shallow Wells Nos. 11 and 12 and is blending the radium-compliant water from those wells with water from Well No. 8; has constructed and placed on line radium-removal systems at Wells Nos. 3 and 10; will substantially complete and place on line new shallow Well No. 13 by March 31, 2009, with final completion by May 1, 2009; and has upgraded storage, pumping and piping capacities to facilitate the provision of water, either from

wells with radium-compliant water or from blending, that meets the state radium drinking water standards.

5. The Defendant implemented an effective water conservation program in April 2006 that includes, but is not limited to, the following elements: implementing Section 13.11 of the Waukesha Municipal Code limiting sprinkling; publishing a web site containing conservation practices and ideas; adopting a City wide water conservation and protection plan; participating in a pilot project involving water saving fixtures; initiating design and construction of a water-recycling portion of the iron removal plant at Well No. 8; installing sprinkling ordinance signs; collaborating on establishing, and participating in, the Waukesha County Conservation Coalition; and, implementing a conservation water rate structure. Waukesha's conservation success has been demonstrated by achieving reduced maximum day and annual average day water demand to below those of the past 20 years.

6. The Defendant has developed a water supply management plan requiring considerable increased management and staff time as well as increased annual operation costs.

7. To meet the Radionuclide Standards in the distribution system at each customer connection until Defendant implements measures to achieve complete compliance with federal and state Radionuclide Standards, by no later than June 30, 2018, Defendant may rely on weighted averaging. Weighted averaging as used in this Stipulation is defined as using a 12-month running

annual average of results from water samples collected at predetermined representative monitoring locations to demonstrate that the water served to every point in the distribution meets the radionuclide MCLs, as set forth in the Operation and Monitoring Plan for Compliance with the Radionuclides Standards attached hereto as Exhibit A and incorporated herein by reference (the "Operation and Monitoring Plan"). The Department shall determine compliance with the Radionuclides Standards in accordance with the process set forth in the Operation and Monitoring Plan.

8. Defendant shall operate its water system to minimize the use of wells that exceed the Radionuclide Standards as much as possible. Defendant shall use only wells that provide water meeting the Radionuclide Standards to the distribution system for at least 8 months of each calendar year. At any time during the calendar year, Defendant shall be permitted to operate non-compliant wells a maximum of 2 days per month per well for sampling and maintenance, and such flow shall not be considered in the weighted averaging calculations. Defendant shall for no more than the remaining 4 months of each calendar year use a combination of wells that provide water meeting the Radionuclide Standards entering the distribution system and those wells providing water to the distribution system that do not meet the Radionuclide Standards.

9. If Defendant fails to meet the weighted average for radionuclides, Defendant shall within three years of such failure discontinue the supply of

non-radionuclide-compliant water to the distribution system and shall meet state and federal Radionuclide Standards.

10. Defendant shall submit to the Department of Natural Resources an annual report documenting well operation, documenting monitoring results, summarizing the days that each well has operated each month of the calendar year, excluding the 2 days for monitoring and maintenance as provided in Paragraph 8, calculating the weighted average for the Radionuclide Standards at each monitoring location and documenting progress towards achieving compliance with state Radionuclide Standards. (A sample report is included in Exhibit A.)

11. The Department of Natural Resources shall perform an annual review of Defendant's annual report to evaluate Defendant's performance under this Stipulation and progress toward complete compliance with Wis. Admin. Code ch. NR 809 requirements for radionuclides.

12. Defendant shall conduct monitoring of radium 226, radium 228 and gross alpha pursuant to the Operation and Monitoring Plan approved by the Department within thirty days of the date of entry of the judgment in this case. The Operation and Monitoring Plan shall provide for a minimum of annual sampling for compliant wells and quarterly sampling at each entry point for noncompliant wells, plus monthly sampling for noncompliant wells during the months of each calendar year that the noncompliant wells are in use during the first year with potential reduction of this monthly sampling as set forth in the Operation and Monitoring Plan.

13. Defendant shall by June 30, 2018, achieve complete compliance with all federal and state drinking water Radionuclide Standards, which require that radionuclide-compliant water can be provided in the event of the failure of the system's largest well, by some combination of obtaining new sources of compliant water and by treating for radionuclide-removal existing and/or new sources of water.

14. In the event that any duty or obligation required by this Stipulation is either delayed or not completed for causes beyond Defendant's reasonable control and outside Defendant's reasonable anticipation and without its fault or negligence, the Defendant shall not be deemed to be in default of this Stipulation and Order for Judgment. These circumstances of *force majeure* include, but are not limited to, unpreventable system breakdowns, nature, acts of God, war, labor disputes and disturbances, and failures of governmental agencies or third parties to act or conditions under the law that preclude the City from acting. These circumstances do not include economic hardship. For purposes of this *force majeure* provision, it is presumed that delay is the Defendant's responsibility, and it shall bear the burden of rebutting that presumption. Defendant shall notify DNR in writing within 4 days of its becoming aware of any circumstance of *force majeure*. Any circumstances of *force majeure* shall be remedied as soon as reasonably possible, and the obligations under this stipulation shall be resumed and met as soon as reasonably possible after those events no longer exist.

15. Except as between the parties to this action, nothing contained in this Stipulation and Order for Judgment shall be construed as an admission of liability by the Defendant in any proceeding now pending or hereafter commenced.

16. The accompanying order for judgment and judgment may be entered incorporating the terms of this stipulation and docketed without further notice.

Dated: _____	Dated: _____
J.B. VAN HOLLEN, Attorney General	REINHART BOERNER VAN DEUREN S.C.

_____ JOANNE F. KLOPPENBURG Assistant Attorney General State Bar # 1012239 Attorneys for Plaintiff Post Office Box 7857 Madison, Wisconsin 53707-7857 (608) 266-9227	_____ DONALD P. GALLO State Bar # 1001278 Attorneys for Defendant P.O. Box 2265 Waukesha, Wisconsin 53187-2265 (262) 951-4555
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_____ Dated: _____ CITY OF WAUKESHA

_____ Curt R. Meitz State Bar # 1017139 City Attorney 201 Delafield Street Waukesha, Wisconsin 53188 (262) 524-3525

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing stipulation in *State v. City of Waukesha*, Case No. 09-CX-_____, which provides for the entry of judgment in favor of the State and against the City of Waukesha along with the payment of forfeitures, statutory surcharges and costs totaling \$55,000.00 according to the schedule set in the stipulation, plus the taking of certain interim and permanent steps to achieve compliance with state radionuclide requirements, and directs the clerk to enter the judgment incorporating the terms of this stipulation, and to docket the judgment, this _____ day of February, 2009. This is a Final Order under Wis. Stat. § 808.03(1).

IT IS SO ORDERED.

BY THE COURT:

Circuit Court Judge